

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

STAFF REPORT

Hearing Date/Agenda Number
P.C. 08/27/03 Item:

File Number
CP00-03-009

Application Type
Conditional Use Permit

Council District
4

Planning Area
Berryessa

Assessor's Parcel Number(s)
241-05-014

PROJECT DESCRIPTION

Completed by: Jenny Nusbaum

Location: 550 feet northerly of Commercial street and 1,000 feet westerly of Berryessa Road (11711 Berryessa Road)

Gross Acreage: 1.7

Net Acreage: 1.7

Net Density: n/a

Existing Zoning: HI-Heavy Industrial

Existing Use: Vacant

Proposed Zoning: No change

Proposed Use: Asphalt/concrete crushing and recycling facility

GENERAL PLAN

Completed by: Jenny Nusbaum

Land Use/Transportation Diagram Designation
Heavy Industrial (approx. 1.6 acres) & Public Park/Open Space
(approx. 0.1 acre within Riparian Corridor)

Project Conformance:
☒ Yes ☐ No
☒ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: Jenny Nusbaum

North: Residential, Klauer's Pick n' Pull Auto dismantling

A (PD) Planned Development, HI-Heavy Industrial

East: Single family residential and Flea Market

A (PD) Planned Development

South: SJ Water Company, Graniterock batch plant, American Metals

HI-Heavy Industrial

West: Union Pacific Railroad and Klauer's auto dismantling

HI-Heavy Industrial

ENVIRONMENTAL STATUS

Completed by: Jenny Nusbaum

☐ Environmental Impact Report found complete
☒ Negative Declaration circulated on 07/28/03

☐ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: Jenny Nusbaum

Annexation Title: Orchard No. 57

Date: 9/28/72

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☐ Approval
☒ Approval with Conditions
☐ Denial

Date:

Approved by: _____
☐ Action
☐ Recommendation

APPLICANT/OWNER/DEVELOPER

Graniterock Company
Attn: Ben Licari
P.O. Box 50001
Watsonville, CA 95077

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Jenny Nusbaum

Department of Public Works

See attached memorandum.

Other Departments and Agencies

See attached memorandum from Fire Dept.

GENERAL CORRESPONDENCE

See attached correspondence from residential neighbors and environmental groups.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Graniterock, is requesting a Conditional Use Permit to allow operation of an asphalt/concrete crushing and recycling facility on the subject site. The Zoning Ordinance requires a Conditional Use Permit for the following proposed uses: (1) any use without a permanent fully enclosed building; (2) allowing the noise level to exceed 55 dBA as measured at the property line of residentially zoned or occupied property, or otherwise exceed 70 dBA.

An earlier design of the proposed project was previously scheduled to be heard by the Planning Commission on December 12, 2001. That earlier version proposed a 24-hour outdoor use, which would also have required a Conditional Use Permit. At that time, at the request of the applicant, the Planning Commission deferred further discussion of the item in order to allow the applicant additional time to provide the environmental documentation necessary for completing environmental clearance so that the Director of Planning could make a determination of environmental impacts under CEQA. In July, 2003 Planning staff concluded that the environmental documentation was complete. On July 28, 2003 a Draft Mitigated Negative Declaration was circulated by the Director of Planning and sent to the State Clearinghouse. A revised design of the project is now being brought back to the Planning Commission for consideration.

Project Site Context

The subject property is a 1.7 gross-acre wedge-shaped parcel located approximately 550 feet northerly of Commercial Street and 1,000 feet westerly of Berryessa Road (11711 Berryessa Road) in the HI-Heavy Industrial Zoning District. Currently, the subject site is flat, unpaved, and vacant.

The site is bordered along its long, northern edge by the Coyote Creek riparian corridor and is within the flood plain and almost entirely within the floodway of the Creek. The Flea Market

parking area and a medium density (10.4 du/acre) single family detached residential planned development are located on the opposite side of the Creek.

A one-acre parcel containing a well, owned by San José Water Company, adjoins the southeasterly side of the subject property. As a part of this Permit, Graniterock is proposing to use a 0.4 acre portion of the Water Company property for material storage and handling. Graniterock owns the next parcel to the southeast and uses it for an asphalt/cement batch plant. Union Pacific Railroad tracks lie adjacent to the southwesterly side of the subject property.

Other industrial uses are located to the south, east, and west of the site. These include Klauer's Pick N Pull Auto Dismantler (1065 Commercial), American Metals Recycling at the northeast corner of Commercial Street and Berryessa Road (11665 Berryessa Road), Norcal's recycling facility (1120 Berryessa Road), a cabinet making shop (Yucatan Custom Cabinets at 1157 Berryessa Road), and the Chevron USA Inc. fuel storage facility (1020 Berryessa Road). Across the road at 11740 Berryessa Road, is a site that has a pending Conditional Use Permit application to allow a similar concrete/asphalt crushing and recycling facility.

Site Permit History

There is no record of previous permits issued for the subject site. Graniterock had previously used the site for a recycling operation without a permit. In June 1999, the City of San José issued a Compliance Order requiring cessation of the operations and removal of all materials and equipment on the parcel. Graniterock subsequently stopped operations on the site, and on March 10, 2000 applied for the subject Conditional Use Permit to allow an asphalt/concrete crushing and recycling facility. Because the subject site is not contiguous with the parcel on which the existing Graniterock batch plant is located, the proposed project is not considered an expansion of the existing Graniterock operation.

Proposed Facility Operation

The proposed facility would process recyclable construction materials, reducing the need to dispose of old pavement and concrete in landfills. Recyclable road materials (either "blacktop" or Portland cement concrete) would be recovered during construction projects and brought to the site to be ground up for use as recycled road base materials. The recycle process includes: (1) stockpiling recyclable materials; (2) processing the recyclable materials through a processing plant into a road base material; (3) stockpiling the finished product; (4) and loading road base material into trucks with a front-end loader for delivery to construction projects in the area. The recycling operation would be capable of processing a maximum of 150,000 tons per year. Historically, the most Graniterock has recycled at this plant has been below 50,000 tons per year. Actual annual processing would depend on the level of construction activity in the service area.

Graniterock anticipates stockpiling unprocessed material until there is a sufficient quantity and/or foreseen demand to warrant bringing a crusher onto the site. On-site stockpiling is limited by the size of the site. The piles would be up to 100 feet across and up to 40 feet high. The material is fairly stable when deposited in the pile and poses minimal risk of slippage. Because the piles would be located in a flood plain and a floodway, the site will be graded and reconfigured prior to use to increase the open cross section of the floodway. During the winter flood season (October 15 to April 15) Graniterock will use a reduced cross section pile configuration to minimize interference with high water flood flows.

The crusher processing plant would be a series of portable units brought to the site by truck and stabilized by self-contained supports. Electrical power for the processing plant is provided by a diesel powered generator in an enclosure. A typical portable unit would use a 400 hp generator and allow recycling of roughly 1000 tons of material in a work day. In order to comply with the Bay Area Air Quality Management District Risk Management Policy for Diesel Particulate Matter (DPM) air emissions, the applicant proposes that the diesel generator will be limited to 390 cumulative hours of operation in any 12 consecutive month period. The applicant proposes to provide a connection to utility grid electrical power and remove the generator from the site only if the plant is to operate in excess of 390 hours in a 12 month-period.

Proposed operation of the facility is Monday through Saturday, 6:00 AM through 8:00 PM for the drop-off of recyclable materials, Monday through Saturday from 7:00 AM to 5:00 PM for processing plant operations, and Monday through Saturday, 6:00 AM through 8:00 PM for pick-up of finished road base.

Project Site Design

The site would be paved and used for the recycling operation, except for a landscaped riparian buffer area, at least 25 feet in width, along the Coyote Creek riparian corridor. Areas proposed for storage of processed and unprocessed materials are designated on the site plan. A three-foot high wood rail fence with an asphalt curb to direct runoff into a storm drain inlet would be constructed along the outside edge of the riparian setback area to preclude recycling operations from this area. Runoff would be directed to a proprietary manufactured (Stormceptor) oil and sediment trap on site and discharged to a newly constructed outfall into Coyote Creek. The outfall would require approval by the Santa Clara Valley Water District. As mitigation for noise effects, a sound control barrier will be constructed along the work-site perimeter where the crusher is located. The barrier will be a minimum of 14 feet high measured from the work site grade level and extend at least 100 feet long. This barrier will incidentally serve as additional visual screening and may mitigate dust impacts of the proposed operations.

The project does not have street frontage. Access to the subject site is proposed through a loop entering from Berryessa Road via a new easement along the adjacent Union Pacific Railroad tracks and exiting via a new easement through the San José Water Company property and through the Graniterock batch plant site.

Other than the new outfall structure and stockpiles of unprocessed and processed material, no other permanent structures are proposed for the project. A port-a-potty would be brought to the site for use by on-site employees.

GENERAL PLAN CONFORMANCE

The proposed use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Heavy Industrial in that an outdoor asphalt/concrete crushing and recycling facility are considered to be Heavy Industrial uses. The proposed use would not be

permitted in that portion of the site (Coyote Creek riparian corridor) which has a General Plan Land Use/Transportation Diagram designation of Public Park and Open Space.

The proposed use is substantially consistent with the General Plan Flooding Policies. The General Plan Flood Policy No. 3 states that "Designated floodway areas should be preserved for non-urban uses." Although the project proposes an urban use within a floodway area, no human habitation is proposed, and the site will be graded to reduce flood impacts to people and property to a less than significant level.

PUBLIC OUTREACH

A notice of the public hearing was published in the San José Mercury News and distributed to the owners and tenants of all properties located within 1,000 feet of the subject site. Staff has also been available to discuss the proposed project with members of the public.

Graniterock held a community meeting on Monday, July 31, 2000 at 6:30 p.m. at the Radisson Plaza San José 1471 North 4th Street, San José. Invitations were sent to all neighbors within 1,000 feet of the planned project. Approximately 30 persons attended the meeting. The primary issues of concern were noise and dust from the existing industrial operations near the residential area. None of the residents attending the meeting spoke in favor of the project.

Staff has received written correspondence (attached) from several neighbors who all reside approximately 300 to 1,000 feet northeasterly of the subject site. The concerns of these residents are additional noise, pollution, and traffic congestion resulting from the project. Residents believe that existing conditions relating to these environmental impacts are already intolerable, and that this project, combined with other pending and recently approved projects located in the general vicinity of their residences, will worsen the existing environmental setting. The applicant has revised the project and proposed mitigation measures to address some of these concerns.

ENVIRONMENTAL REVIEW

An Initial Study was prepared for this project and a Draft Mitigated Negative Declaration was circulated for public review by the Director of Planning on July 28, 2003. The following are the key issues that were addressed.

Traffic

Material would be brought to the site in conventional dump trucks of 7 ½ to 10 cubic yard capacity, capable of carrying 15 to 20 tons of old paving each. Road base would be shipped out in 20 to 24 ton loads. The truck traffic associated with a typical 1000-ton day of crushing activity would thus be 65 trucks carrying material in, and 50 trucks carrying material out. At the maximum estimated processing rate of 150,000 tons, annual truck activity would be on the order of 17,250 truck trips. Because of the nature of the paving business, 90% of these truck trips would not be new trips to the Berryessa Road plant. Trucks bringing in material to be recycled

will normally leave with new paving material; otherwise, the same trip would have been made with an empty truck to pick up the new paving material. With an estimated 90% of trucks bringing recycling material and picking up new material, the net increase in truck traffic for the recycling operation would be about 1,725 trucks per year; an average of 9 trucks per day. This increase in traffic is a less than significant environmental impact.

Noise

Noise studies prepared by Thomas Reid Associates and entitled “Noise Monitoring of Unloading (Drop-off) and Loading (Pick-up) Components of the Proposed Recycling Operation at Graniterock, Berryessa Road, San José, CA,” dated March 30, 2001, “Noise Monitoring of Nighttime Unloading (Drop-Off) and Loading (Pick-Up) Components of the Proposed Recycling Operation at Graniterock, Berryessa Road, San José CA,” dated April 26, 2001, and “Community Noise Exposure for the Proposed Recycling Operation at Graniterock, Berryessa Road, San José CA,” dated May 7, 2001 identified some intrusive noise impacts from the project and recommended three mitigation measures to reduce the potential for noise impact on the residential area to insignificance. Equipment will still be audible, particularly the back-up alarm beepers, but the overall CNEL and any hourly Leq will increase less than 3 dB.

1. The generator and crusher will be a model that produces a noise level of 60 dBA one hour Leq or less at a distance of 100 feet.
2. The hours of operation will be limited to reduce impact on residential areas.
Crusher operations: 7 AM to 5 PM Monday through Saturday.
Raw material drop-off : 6 AM to 8 PM Monday through Saturday.
Processed material load-out: 6 AM to 8 PM Monday through Saturday.
No operation on Sunday.
3. The crusher operation area will have a sound barrier installed at all times the crusher is located on-site.

With the incorporation of these mitigation measures, as proposed by the applicant, noise from the proposed operation, when added to the existing background noise levels, would result in a less than significant increase in noise per CEQA standards.

Air Quality

Based upon the Initial Study prepared for the project, the following mitigation measures would be included to minimize the project's air quality impact.

1. To control fugitive dust at the operation, Graniterock will employ Best Management Practices, including using dust suppressant and water as necessary to wet exposed piles, paving the main roadway and storage area, and emission control equipment on the plant which will be maintained and inspected regularly.

2. Overall air emissions will be limited by compliance with a Permit to Operate issued for the processing plant equipment from the Bay Area Air Quality Management District (BAAQMD).
3. The diesel particulate exposure and associated health risk can be mitigated by limiting generator operations to 390 hours per year. This is enforceable because the generator is equipped with a tamper-proof, non-resettable hour meter.
4. If the Plant will be operated more than 390 hours in a 12-month period, Graniterock will supply electrical power from the utility grid.

Biology

The applicant has provided a biotics report entitled “Graniterock Berryessa Branch: Asphalt/Concrete Recycling Center: Revised Riparian Assessment,” prepared by the Biotic Resources Group, and dated June 27, 2002. The report indicates that the project site supports a sensitive habitat type, the cottonwood-willow riparian forest, that occurs along Coyote Creek. This habitat is considered sensitive by the California Department of Fish and Game, and the City of San José, due to the habitat’s high value to wildlife and limited distribution. Both agencies recommend avoidance of impacts and provision of setbacks for new development near such habitat. The report also identifies special status wildlife species that may inhabit the riparian habitat adjacent to the project site, including Steelhead Trout, California Red-Legged Frog, Southwestern Pond Turtle, Cooper’s Hawk, Yellow Warbler, Pallid Bat, and San Francisco Dusky-footed Woodrat. Raptors may also nest in the larger trees.

According to the biotics report, indirect impacts of the project on wildlife may include noise disturbance, dust, and water pollution. Based upon the report’s recommendations, several measures are proposed to be incorporated into the project design to reduce impacts to the corridor to a less than significant level. Implementation of the measures would improve the overall conditions of the adjacent habitat area.

As primary mitigation, the project would provide an average 30-foot setback area, with a minimum setback of 25 feet, from the dripline of the riparian corridor. Within this setback, the developer would remove inorganic debris and invasive, non-native plants from the riparian corridor and revegetate degraded portions of the riparian area with native plant species typical of riparian habitat. Graniterock will use mechanical means and/or herbicide to remove *Arundo donax*, an invasive exotic plant species, from its property. Any plants that are not successful in the first three years of planting will be replaced. A 3-foot high wood rail fence would be provided along the outside edge of the setback area to preclude recycling operations from this area and on-site lighting would be directed away from the corridor or shielded. Stormwater run-off would be controlled on site and processed through an oil/sediment separator before being discharged into the creek.

Aesthetics

Based upon the Initial Study prepared for the project, two mitigation measures would be included to minimize the project's visual impact. (1) To minimize the potential for light and glare, night processing plant operations will be prohibited and only minimal security lighting will be used. (2) The overall aesthetics of this stretch of Coyote Creek will be improved by planting this area with sustainable native trees and other plants which will enhance the beauty and diversity of this section of the creek, while providing additional buffer from the proposed operation. Development of the project would also discourage illegal dumping of household trash on adjacent properties that impact the stream.

Flood

The site is entirely within the 100-year floodplain of Coyote Creek. The project would not place human habitation or permanent structures in the flood plain, but will place temporary stockpiles of paving material before- and after- recycling. Flood flows from the 10-year or greater storm (e.g. the 100-year storm) cause water to spill over the banks of Coyote Creek and flood the project site. In the 100 year storm event, water levels on the site would rise 3 to 4 feet. Under these conditions, the site becomes a part of the Coyote Creek floodway and flood water moves through the site.

A Flood Hydraulics Study, entitled "Berryessa Road Materials Asphalt/Concrete Recycling Center", by Schaaf & Wheeler, dated June 5, 2003 noted that with the site in its present condition, addition of the piles of unprocessed or processed material would block a part of the floodway, causing water levels immediately upstream to rise, enlarging the area subject to flooding. There would not be increased flooding at Berryessa Road itself.

To avoid this increase, the project was modified to include 1) minor excavation of the site, increasing the floodway cross section and 2) a winter operation program that will be used to change the shape, size, and location of the material storage area to maintain no net obstruction to flood water flows. This combination mitigates potential impacts to less than significant. The revised grading condition consists of lowering the proposed grade by 2 feet within the project limits. Even though there will be some excavation, no fill, equipment, or material will be placed within the 30 foot setback from Coyote Creek. The recyclable material piles will be a pseudo-triangular pile and will extend approximately 300 feet from the concrete storage bin on the eastern end to the truck turnabout on the western end. For the hydraulic analysis, the pile was assumed to be 10-12 feet high and have 40 degrees side slopes. The results of the hydraulic modeling indicate that the revised project condition would not cause an increase in the 100-year energy grade elevations within the project limits nor would it create an increase in the 100-year water surface or energy grade elevations upstream of the project.

ANALYSIS

The main issues associated with the project are: (1) land use compatibility; (2) conformance with the City's *Riparian Corridor Policy*; (3) conformance with the *Industrial Design Guidelines*; and (4) conformance with the City's Zoning Ordinance.

Land Use Compatibility

In terms of CEQA compliance, noise, air quality and water quality impacts of the proposed project have less than significant impacts, if appropriate enforceable mitigation measures are built into the project design. The appropriateness of the proposed project within the existing neighborhood context, proximity to Coyote Creek, and the enforceability of proposed mitigation measures, are key considerations for a Conditional Use Permit application. In particular, the proposed project would have potential noise, air quality, and water quality impacts that while below CEQA levels of significance, are of real concern to the neighboring community.

Noise Impacts

Noise studies completed for this and other recent projects in the vicinity have found that the area has a high level of noise generated by existing heavy industrial uses and frequent overhead airplane flights. In particular, the single family residential neighborhood located at the edge of the heavy industrial area, immediately to the northeast of the subject property, is currently impacted by noise generated by the existing Graniterock operation to the south, by traffic on Berryessa Road and by the operation of American Metals. Existing ambient sound levels at the residential area are in the 50 to 55 dBA range (A-weighted average sound level in decibels) from 7 AM to around 8 PM in the early evening, in the range of 40 to 45 dBA at night between 11 PM and 5 AM, and are in between these ranges during the early morning, and late evening transition. Distinguishable sounds coming from the industrial area south of Coyote Creek included engine noises, back-up beepers, and crashing sounds. The City of San José sets 55 DNL (Day-Night Average Sound Level: the A-weighted average sound level in decibels during a 24-hour period with an additional 10 decibel weighting applied to night-time sound levels) as its normally acceptable residential standard. The existing setting consistently exceeds this standard.

A noise analysis completed for the nearby residential development at the time of its approval noted that the existing noise sources that would impact the residences included both the asphalt/cement plant and auto wrecking yard, which create occasional loud noises, including sharp bangs, grinding noises and engine noise associated with equipment start-up operation of machinery and large vehicles and loading of haul trucks. The report stated that at night, the continuous low frequency rumble-type noise created at the asphalt/cement plant may cause annoyance to more sensitive persons, even though the levels are within the limit of the City's standards. Noise from these sources usually cannot be mitigated at exterior areas by property line barriers; however, closed windows may control most of these noise impacts.

The noise report submitted by the project applicant also noted that the proposed operations could be intrusive in the nearest portion of this residential neighborhood at the corner of Notting Hill and Chessington streets. The report identified that some of the proposed operations would be

noticeable to the nearby residents and that in some cases would result in a nuisance. The impact on the noise environment would not be limited to quieter hours. Certain actions within the proposed process are loud and easily distinguishable across Coyote Creek at the nearest residences. The loading operation was clearly affecting the noise levels at this location during the generally louder daytime noise environment, and would have a proportionally larger impact at night or early morning when ambient noise is normally low. For example, the report stated that noise generated by proposed load-out operations would be distinctly noticeable above the elevated daytime ambient noise, producing brief levels of 60 to 65 dBA at the neighborhood and that when levels fall below 50 dBA during the early morning or late evening, this noise source would become clearly intrusive. Peak noise levels for the proposed unloading process observed at the corner of Notting Hill and Chessington during the three trials hovered between 54 and 56 dB, and the sound level reached 71 dB when commercial jet planes passed overhead. Operation at the full requested hours would elevate neighborhood DNL by 2.54 dB to 60.07 dBA DNL. Even with no site activity, L01(highest 1% noise) levels exceeded 70 decibels during 5 minute intervals at the corner of Notting Hill and Chessington.

For areas that exceed the General Plan noise standard of 55 dBA DNL, the City sets an increase of 3dB as a threshold of significance. While in this urban setting, the cumulative impact of the recycle operation would not exceed the 3 dB criterion, even if active at the maximum operating hours requested in the use permit application, it is the City's discretion to consider the effects upon the neighboring residents in its review of the proposed use.

Residential neighbors have indicated by correspondence and at the community meeting held by the applicant on July 31, 2000, that they would prefer hours of operation between 8:00 AM and 5:00 PM and that it would be unacceptable for any proposed operations to occur beyond the hours of 7:00 AM to 7:00 PM, Monday through Friday. Residents have also emphasized that existing ambient noise levels create a nuisance, and that any exceeding of existing noise levels would be intolerable.

In response to neighborhood concerns, Planning staff initially asked the applicant to redesign the project so that operations would occur within an enclosed building between the hours of 7:00 AM to 7:00 PM. The applicant stated that it would be operationally infeasible to house the project in an enclosed building and economically infeasible to operate solely between the hours of 7:00 AM to 7:00 PM, Monday through Friday.

The applicant has reduced the hours of proposed operation from 24 hours, seven days a week to 14 hours (6:00 AM to 8:00 PM), six days a week (Monday through Saturday) to correspond to the airport take-off and landing hours. Planning staff recommends that the project hours be reduced further so that operations would occur within the hours that are normally allowed for construction activities: Monday to Friday from 7:00 AM to 7:00 PM, and Saturday from 8:00 AM to 5:00 PM. The reduction in hours of operation will also reduce air quality impacts.

Air Quality/Dust and Odor Control

Because the proposed crushing operation would be conducted outdoors and would include use of a diesel generator, air quality, dust, and odor control measures are important considerations. The

proposed equipment has permits from the Bay Area Air Quality Management District and meets their standards for emissions for portable diesel engines. The applicant has performed a risk screen analysis for the operation of the portable equipment on the subject site to assess the increased risk of cancer to nearby sensitive residential and workplace receptors. It should be noted that the Initial Study identifies provision of all-electric power with no diesel generator use as a project alternative to address air quality impacts; this project alternative would also have the result of reducing noise impacts further. The reason Graniterock proposes to use a diesel generator provisionally is due to the high cost of providing adequate capacity electrical lines connecting to the utility grid and the uncertainty about the number of hours of operations that the level of business will support. In the interest of ensuring minimal impacts to the peace, health, safety, and welfare of persons residing or working in the surrounding area, Planning staff recommends that the all-electric power/no diesel generator project alternative be adopted as a condition of project approval.

As previously noted, the applicant has stated that their operations will employ Best Management Practices to control fugitive dust at the operation, including using dust suppressant and water as necessary to wet exposed piles, paving the main roadway and storage area, and emission control equipment for the plant, which will also be maintained and inspected regularly. Dust impacts would also be mitigated somewhat by portable wall panels that would shield equipment operating on the subject site. Correspondence from residential neighbors, however, indicates that the existing Graniterock operation has been unsuccessful in controlling fugitive dust, and it is unclear how effectively dust control methods actually practiced at the subject site would control fugitive dust.

Vehicle exhaust odor could also potentially create a nuisance to the residential properties located within 300 feet of the project site. The odor would be mitigated by the intervening vegetation and further reduced by the limited hours of operation.

Riparian Corridor Policy

The biotics report submitted for the project includes analysis of the project's conformance with the City's Riparian Corridor Policy. The Policy goal is to protect the City's riparian corridors beyond the minimum requirements for mitigating environmental impacts under CEQA. While conformance with the Policy typically requires a 100-foot setback from the riparian corridor edge, reduced setbacks are allowed in specific situations and in particular for properties with disproportionately long riparian frontages. The applicant has increased the proposed setback from that originally proposed for the project. The setback now averages 30 feet, and will not be less than 25 feet. Given the extremely narrow configuration of the site, Planning staff believes that this setback conforms to the intent of the Policy, taking into account: 1) the project does not propose permanent structures within 100 feet of the creek with the exception of the proposed outfall structure; 2) the project will provide substantial riparian vegetation enhancement in the buffer; and 3) the site geometry is constrained so that a 100 foot buffer would make development of the site impractical.

Industrial Design Guidelines

In accordance with the *Industrial Design Guidelines*, the project proposes that all areas used for outdoor activity on the subject site will be paved to control dust and drainage. Because the project site is not visible from the public right-of-way, minimal landscaping, screening walls, etc., are included.

The *Industrial Design Guidelines* state that new development should avoid creating adverse impacts, such as noise, dust, and traffic for nearby properties. Activities that generate noise, traffic, dust, or odor and activities that use hazardous materials should not be located in proximity to residential or other sensitive uses. Loading areas, access and circulation driveways, trash and storage areas should be located as far as possible from adjacent residences. Any negative effects on adjacent properties should be fully mitigated. The project however would result in new noise, dust and traffic impacts upon the residents. Because of the extreme sensitivity of both the adjacent riparian corridor and the nearby residential neighborhood, staff has concluded that the project should be designed to the extent possible to minimize noise and dust impacts. Staff advised the applicant to enclose the recycling operation within a building to better control noise and dust emanating from the operation. The applicant has indicated that it would not be feasible to do so. As proposed, the project does not fully avoid negative effects on the adjacent residential properties, and would create adverse impacts upon those properties, although these impacts would be less than significant per CEQA standards. Modifying the project as proposed by staff would help to reduce those impacts.

Zoning Ordinance

The proposed recycling center is consistent with the types of uses allowed within the Heavy Industrial Zoning District. The Zoning Ordinance however requires that a recycling facility that includes processing or transfer operations located within five hundred (500) feet of property zoned for residential use not be in operation between 7:00 PM and 7:00 AM, unless the deciding Planning authority makes a finding that such modifications are reasonably necessary in order to implement the general intent of the Ordinance. Findings for granting a Conditional Use Permit must also be made for the proposed operations occurring onsite without a permanent fully enclosed building; for on-site, outdoor activity that is proposed within one-hundred fifty (150) feet of any residentially zoned property between the hours of 12:00 midnight and 6:00 A.M.; and for allowing the noise level to exceed 55 dBA as measured at the property line of residentially zoned or occupied property, or otherwise exceed 70 dBA.

The nearest residential use is approximately 300 feet from the subject site. As discussed above, residents of that neighborhood have voiced strong opposition to the project and have raised significant concerns regarding noise and air quality impacts from the project. Additionally, the project site is bordered by the Coyote Creek riparian corridor and, due to site constraints, attains only a minimal level of conformance with the Riparian Corridor Policy. Given these conditions, staff proposes modifications to the project design in order to address the standard requirements of the Zoning Ordinance more effectively.

Conclusion

Although the proposed project raises serious concerns of land-use compatibility with adjacent residential uses, it would also provide an important recycling service in support of construction activity within San José. In addition, Heavy Industrial lands are most appropriate for the proposed use, and their availability is limited. The proximity of the operation to the existing Graniterock operation reduces the creation of new vehicular traffic. For these reasons, Planning staff recommends approval of the project, provided that the project hours be reduced so that pick-up and drop-off operations would occur Monday to Friday from 7:00 AM to 7:00 PM, and Saturday from 8:00 AM to 5:00 PM. Processing plant operations would occur Monday to Friday from 7:00 AM to 5:00 PM, and Saturday from 8:00 AM to 5:00 PM.

Planning staff also recommends that the project be conditioned to require that the applicant provide a connection to utility grid electrical power, instead of a diesel generator. Although the applicant prefers not to implement this project alternative because of the additional costs that would result, Planning staff recommends that this measure be selected instead of the project chosen by the applicant.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Heavy Industrial and Public Park/Open Space on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the HI-Heavy Industrial Zoning District.
3. The site is generally surrounded by Coyote Creek, residential, commercial, and industrial uses, and bound by Coyote Creek riparian corridor, the San José Water Company property, and the industrial operations of City Metals and Klauer's Pick-n-Pull Auto Dismantlers.
4. A Mitigated Negative Declaration has been adopted for this project which indicates that certain mitigation measures will be incorporated into the project to prevent the occurrence of any significant adverse effect on the environment.
5. The Permit proposes construction of an asphalt/concrete crushing and recycling facility on the subject site.
6. In the HI-Heavy Industrial Zoning District, a concrete/asphalt crushing facility requires a Conditional Use Permit.

7. The Zoning Ordinance requires a Conditional Use Permit for the following uses: (1) any use without a permanent fully enclosed building; (2) on-site, outdoor activity, including loading, sweeping, landscaping or maintenance within one-hundred fifty (150) feet of any residentially zoned property between the hours of 12:00 midnight and 6:00 A.M.; (3) allowing the noise level to exceed 55 dBA as measured at the property line of residentially zoned or occupied property, or otherwise exceed 70 dBA.
8. The Zoning Ordinance requires that a recycling facility that includes processing or transfer operations located within five hundred (500) feet of property zoned for residential use can not be in operation between 7:00 PM and 7:00 AM unless the deciding Planning authority makes a finding that such modifications are reasonably necessary in order to implement the general intent of Title 20. Findings for granting a Conditional Use Permit must also be made for the proposed operations occurring onsite without a permanent fully enclosed building; for on-site, outdoor activity that is proposed within one-hundred fifty (150) feet of any residentially zoned property between the hours of 12:00 midnight and 6:00 A.M.; and for allowing the noise level to exceed 55 dBA as measured at the property line of residentially zoned or occupied property, or otherwise exceed 70 dBA.
9. The *Industrial Design Guidelines* state that new development should avoid adverse impacts, such as noise, dust, and traffic, on nearby properties. The location of activities generating noise, traffic, dust, or odor and activities using hazardous materials in proximity to residential or other sensitive uses, should be avoided. Loading areas, access and circulation driveways, trash and storage areas should be located as far as possible from adjacent residences. Any negative effects on adjacent properties should be fully mitigated.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project will be consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project is substantially consistent with the adopted San José 2020 General Plan policies.
3. The proposed project complies with all applicable provisions of the Zoning Ordinance.
4. The proposed project is in compliance with the California Environmental Quality Act.
5. The project is substantially in conformance with the requirements of the Industrial Design Guidelines.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or

- b. Impair the utility or value of property of other persons located in the vicinity of the site;
or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
- a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and a Certificate of Permit has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be *signed, notarized, and returned* to the Department of Planning, Building and Code Enforcement within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the acceptance form.
2. **Site Development Permit.** This permit fulfills the requirement for a Site Development Permit.

3. **Industrial Waste.** If industrial waste, as defined by Section 15.12 of the San José Municipal Code, is to be discharged into the sanitary sewer system, a clearance shall be obtained from the Water Pollution Control Plant, Industrial Waste Section.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Berryessa Road Materials Asphalt/Concrete Recycle Center," last revised on June 6, 2003, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
3. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
5. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
6. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by

licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement and Building prior to approval of the final inspection of the project.

7. **Lighting.** On-site lighting shall use Low-Pressure Sodium fixtures and be designed, controlled and maintained so that no light source is visible from outside of the property. Electroliers shall not exceed 20 feet above grade. No lighting or other improvements shall be permitted within the 30 foot setback from the riparian corridor.
8. **Refuse.** All trash areas shall be effectively screened from view, covered and maintained in an orderly state. No outdoor storage is allowed unless designated on approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
9. **Utilities.** All on-site telephone, electrical and other overhead service facilities shall be placed underground.
10. **Outside Storage.** No outside storage is permitted except in areas designated on the approved plan set.
11. **Stockpiled Materials.** Stockpiled materials shall be set back at least 25 feet from the edge of the riparian corridor. Stockpiled materials shall not exceed 12 feet in height from October 15th through April 15th, and shall not exceed 40 feet in height from April 16th through October 14th.
12. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
13. **Tree Removals.** This permit does not allow any tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope to be removed.
14. **Tree Mitigation.** If any tree is to be removed, it shall be mitigated at the following ratios:
 - a. Each tree removed less than 12 inches in diameter shall be replaced by one 15-gallon tree.
 - b. Each tree removed from 12 inches to 18 inches in diameter shall be replaced by two 24-inch-box trees.
 - c. Trees 18 inches in diameter or larger shall not be removed unless a Tree Removal Permit has been approved for the removal of such trees. Each tree removed 18 inches in diameter or larger shall be replaced by four 24-inch-box trees.
15. **Tree Protection Standards.** The applicant shall maintain the trees and other vegetation to be retained in this project. Maintenance shall include pruning and watering as necessary and protection from construction damage. All trees to be preserved shall be permanently identified by metal numbered tags prior to the removal of any tree on the site. All trees to be

saved shall be protected by fencing of chain link, hog wire, or other fencing approved by the Director of Planning prior to issuance of the Grading Permit or removal of any tree. The fence shall occur at the dripline in all cases and shall remain during construction. Tree masses to be saved may be protected with a fence surrounding the dripline of the entire mass. All sensitive plant and wildlife habitat areas to be preserved and protected shall be posted prior to issuance of Grading Permit with signs stating that no disturbance, including grading, storage of equipment, vehicles or material, or other disruptions, is allowed. Fencing may be required for areas subject to direct impact, such as trees to be saved or habitat within areas being developed. Fencing and signage shall be maintained by the applicant to prevent disturbances during the length of the construction that might disrupt the habitat or trees.

16. Public Works Clearance. A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-14489) to the satisfaction of the Director of Public Works:

a. *Flood: Zone A8, Elevation 69.00' 1929 N.G.V.D.*

- 1) Based upon the Flood Hydraulics Study, entitled "Berryessa Road Materials Asphalt/Concrete Recycling Center," submitted by the applicant's engineering consultant, Schaaf and Wheeler, dated June 5, 2003, the stockpile for the proposed Berryessa Road Materials Asphalt/Concrete Recycling Center shall not result in any increase in flood levels during the occurrence of the base flood discharge. The applicant shall prepare the site, and use the winter flood season, October 15 to April 15, storage configuration as per the recommendation in the Hydraulics Study by Schaaf & Wheeler, Consulting Civil Engineers, June 5, 2003.
- 2) Any subsequent grading or re-grading of the site other than shown on the plans for this permit should also be analyzed to determine if it would result in an increase in flood elevations.

b. *Geology:*

- 1) A grading permit is required prior to the issuance of a Public Works Clearance.
- 2) If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 277-4304 for more information concerning the requirements for obtaining this permit.
- 3) *Storm Water Management Plan.* This project results in a land disturbance of more than one acre. Prior to the commencement of any clearing, grading or excavation, the project shall comply with the State Water Resources Control Board's National Pollutant Discharge Elimination System (NPDES) General Construction Activities Permit as follows:

- a) The applicant shall develop, implement and maintain a Storm Water Pollution Prevention Plan (SWPPP) to control the discharge of storm water pollutants including sediments associated with construction activities.
- b) The applicant shall file a Notice of Intent (NOI) with the State Water Resources Control Board (SWRCB).

Along with these documents, the applicant may also be required to prepare an Erosion Control Plan. The Erosion Control may include BMPs as specified in the California Storm Water Best Management Practice Handbook for reducing impacts on the City's storm drainage system from construction activities.

Prior to the issuance of a grading permit, the applicant shall submit copies of the SWPPP, NOI and Erosion Control Plan (if required) to the City Project Engineer, Department of Public Works, Room 308, 801 North First Street, San José, California 95110-1795. To obtain an NOI application and further information about the Erosion Control Plan and the NPDES permit requirements, please call the Department of Public Works at (408) 277-5161 or the SWRCB at (916) 657-1146.

- 4) The Project site is within the State of California Seismic Hazard Zone. A soil investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the Project Engineer and/or City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CDMG Spec. Publ. 117) and the Southern California Earthquake Center ("SCEC" report). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- c. *Easements.* Prior to the issuance of Public Works Clearance, a covenant of easement for ingress/egress and all other necessary purposes shall be recorded on the property with all necessary subordinations to the satisfaction of the Director of Planning and the Director of Public Works.
 - d. *Storm Water Stenciling.* All drain inlets shall be labeled "No Dumping--Flows to Bay." Please contact the City of San José, Department of Public Works, at (408) 277-5161 to obtain free stencils.
 - e. *Oil/Sediment Separator Unit.* Installation of the oil/water separator shall be reviewed and approved by the Building Division per the requirements as noted in condition number 19 of this permit.
17. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to

identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance. The project approved by this permit shall include implementation of the mitigation measures identified in the report entitled "Archaeological Evaluation Report, Graniterock Berryessa Road Material Facility, City of San José, Santa Clara County," dated July 2000, prepared by Basin Research Associates. If any significant cultural materials are exposed or discovered during either site clearing or during subsurface construction, operations should stop within 25 feet of the find and a qualified professional archaeologist contacted for further review and recommendations. Potential recommendations could include evaluation, collection, recordation, analysis, etc. of any significant cultural materials followed by a professional report.

Note: Significant prehistoric cultural resources are defined as human burials, features or other clusterings of finds made, modified or used by Native American peoples in the past. The prehistoric and protohistoric indicators of prior cultural occupation by Native Americans include artifacts and human bone, as well as soil discoloration, shell, animal bone, sandstone cobbles, ashy areas, and baked or vitrified clays. Prehistoric materials may include:

- a. *Human bone* - either isolated or intact burials.
- b. *Habitation* (occupation or ceremonial structures as interpreted from rock rings/features, distinct ground depressions, differences in compaction (e.g., house floors).
- c. *Artifacts* including chipped stone objects such as projectile points and bifaces; groundstone artifacts such as manos, metates, mortars, pestles, grinding stones, pitted hammerstones; and, shell and bone artifacts including ornaments and beads.
- d. *Various features* and samples including hearths (fire-cracked rock; baked and vitrified clay), artifact caches, faunal and shellfish remains (which permit dietary reconstruction), distinctive changes in soil stratigraphy indicative of prehistoric activities.
- e. *Isolated artifacts*.
 - 1) Historic cultural materials may include finds from the late 19th through early 20th centuries. Objects and features associated with the Historic Period can include:
- f. *Structural remains* or portions of foundations (bricks, cobbles/boulders, stacked fieldstone, postholes, etc.
- g. *Trash pits*, privies, wells and associated artifacts.
- h. *Isolated artifacts* or isolated clusters of manufactured artifacts (e.g. glass bottles, metal cans, manufactured wood items, etc.)
- i. *Human remains*.

18. Building Clearance for Issuing Permits. Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:

- a. *Construction Plans.* This permit file number, CP 00-03-009, shall be printed on all construction plans submitted to the Building Division.
- b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
- c. *Americans With Disabilities Act and Title 24.* The applicant shall provide appropriate access as required by the Americans With Disabilities Act (ADA) and Title 24.
- d. *Oil/Sediment Separator Unit.* Installation of the oil/water separator shall be reviewed and approved by the Building Division per the requirements as noted in condition number 19 of this permit.

19. Oil/Sediment Separator Unit. The project developer shall install an oil/sediment separator unit to the satisfaction of the Director of Public Works and the Director of Planning, Building and Code Enforcement. The unit shall be installed, maintained, and replaced according to manufacturer's specifications and requirements by a qualified consultant hired by the property owner. Copies of all inspection and maintenance records shall be provided to the City upon request. The project developer shall implement a maintenance program that includes but is not limited to the following measures:

- a. Installation. The unit shall be installed by a qualified individual in conformance with the manufacturer's specifications. Installation records shall be maintained by the project developer and subsequent property owner.
- b. Maintenance Record. The property owner must keep a record available for inspection on the project site of all inspections and maintenance of the unit.
- c. Regular Sweeping. Paved surfaces subject to runoff shall be swept regularly during dry periods to remove dirt, silt, and other loose debris.
- d. Regular Inspections, Maintenance, and Proper Disposal. The unit shall be inspected in conformance with the manufacturer's specifications, maintained by a qualified individual as necessary, and when the unit is filled to within one foot of capacity. The unit shall be cleaned and vacuumed at least annually, or more frequently as necessary, to ensure the unit is functioning properly. Proper maintenance involves frequent inspections throughout the first year of installation. The unit is full when the sediment level comes within one foot of the unit's top. This is recognized through experience or the use of a "dip stick" or rod for measuring the sediment depth. When the unit has reached capacity, it shall be cleaned out. This may be performed with a sump vac or vacuum truck, depending on which unit is used. Care should be taken to avoid spilling the collected contaminated material into the

drainage system. Accumulated material shall be disposed of in conformance with all applicable local, state and federal regulations.

20. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.
21. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.
22. **Fire Flow.** Required fire flow for the site is 2,000 gpm, or as otherwise approved in writing by the Fire Chief.
23. **Fences.** No barbed or razor wire is permitted anywhere on the subject site. All chainlink fencing shall be black vinyl-clad fabric and hardware.
24. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored within approved buildings and/or within areas specified on the approved plan set, if any, in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau.
25. **Anti-Graffiti.** The applicant shall remove all graffiti from wall surfaces within 48 hours of defacement.
26. **Recycling.** Scrap construction and demolition material should be recycled. Integrated Waste Management staff at 277-5533 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.
27. **Covenant of Easement.** Prior to the issuance of Public Works Clearance, a covenant of easement for ingress/egress and all other necessary purposes shall be recorded on the property with all necessary subordinations to the satisfaction of the Director of Planning and the Director of Public Works.
28. **Disturbance Coordinator.** A disturbance coordinator shall be identified by the developer for this project. The disturbance coordinator shall be responsible for ensuring compliance with the hours of construction, site housekeeping, and other nuisance conditions in this permit.
 - a. *Daily Log.* The disturbance coordinator shall maintain a log of daily activities on the project, including but not limited to, verification of site closure activities, project cleanliness, complaints on site activities and conditions and dates and times of the coordinators visits to the project if the coordinator is not solely responsible for this project site.

- b. *Telephone Contact.* A phone with answering machine for non-work hours shall be maintained during the duration of project construction. The phone number should be a local call for surrounding residents.
- c. *Signage.* The name and phone number of the disturbance coordinator, the hours of construction limitations, City File Number CP 01-01-008, city contact and phone number (department and phone number), and shall be displayed on a weatherproof sign posted at each entrance to the project site.

29. **Biological Resources and Riparian Corridor Mitigation.** Biological and riparian corridor mitigation measures shall be per the recommendations of the Berryessa Recycling Facility Biotics Assessment by H. T. Harvey and Associates, dated June 27, 2002. The project operations shall be set back a minimum of 25 feet from the riparian corridor. The applicant shall revegetate a 30-foot wide (average) landscaped buffer strip along the riparian corridor and remove invasive exotic plant species such as *Arundo donax* present along its border.

- a. *Ensure No Impediments to Migration.* The outfall structure and its associated bank armoring shall be placed outside of the streambed of Coyote Creek to avoid impediments to migration for salmonids. Rip rap shall be used for bank slope protection. Consultation with the NMFS on all outfall structure designs and associated bank armoring shall be necessary.
- b. *Avoid Impacts to Shaded Riverine Aquatic (SRA) Habitat.* The outfall structure shall be positioned in a location within the Coyote Creek riparian corridor that avoids impacts to SRA habitat. To ensure the avoidance of SRA habitat during outfall construction, the final location for the outfall structure shall be determined in consultation with a qualified biologist. Although no SRA habitat or riparian vegetation shall be disturbed by outfall construction, a CDFG Streambed Alteration Agreement will likely be required for outfall construction.
- c. *Avoid Construction Within or Along the Channel During the Wet Season.* Construction within or along the channel should be restricted to the dry season (June 1 —September 30), the period in which there is minimal water in the channel and in which movement of steelhead and Chinook salmon within the project area is expected to be minimal. Chinook salmon redds downstream from the site should not be impacted, directly or indirectly, if construction occurs during this time. Furthermore, impacts to the movement of anadromous fishes through the project area should be minimal during this time.
- d. *Maintain Connectivity of the Stream Channel During Construction.* Because it is possible that juveniles could be moving downstream during any time of the year, including the dry season, measures should be taken to ensure that movement of these species is not prevented by any water diversion structures used during construction, regardless of when construction occurs. Water should be diverted through the site by way of an open ditch (rather than a pipe) connecting portions of Coyote Creek immediately upstream and downstream of the site. The plastic-lined ditch should be lined with cobble-sized stones to deter predation by making the salmonids less conspicuous as they pass through the

channel. Water within this ditch should be at least 12 inches deep, and no impediments to movement, such as high drop structures, should be present.

- e. *Minimize Impacts to Water Quality.* Measures to prevent or minimize a reduction in water quality during the outfall structure construction are also necessary. If construction occurs during the period June 1 — September 30, minor sedimentation of the stream resulting from construction activities is not expected to impact steelhead or salmon redds downstream, as redds are not active during this period. Small amounts of sediment that accumulate in gravelly spawning areas will likely be flushed when flows increase after rainfall the following late fall and winter, and therefore no permanent impacts to downstream spawning habitat are anticipated. In addition, if the mitigation measures listed above under *Degradation of Water Quality During Construction* are implemented, water quality related impacts to steelhead and Chinook salmon should be reduced to less-than-significant levels.
- f. *Construction after September 30.* Construction activity at the outfall structure into Coyote Creek for the Berryessa Recycling Facility can be extended past the September 30 cutoff under the following conditions:
 - 1) The work site will be maintained in a condition such that it can be winterized within 24 hours if necessary (see below).
 - 2) If a rainfall event of greater than 1/4" within a 24 hour period occurs the project proponent will have a qualified biologist inspect the site within 24 hours of said rainfall to determine if there is the potential for construction to impact water quality or salmonids at the site. If impacts are determined to potentially occur then construction will cease for the season and the site will be winterized.
 - 3) Any deviations from construction season restrictions within the project's regulatory permits will be approved by the permitting agency(s).

30. Hydrology and Water Quality Impacts. The following measures shall be implemented as permit conditions.

- a. *Best Management Practices.* The project applicant will conform with Best Management Practices (BMPs) as described under Section 7-1.01G 'Water Pollution' (Caltrans 1992).
- b. *Mitigation for Aquatic Species.* Implementation of the mitigation measures described below will reduce potential impacts to aquatic species. The following recommendations by the CDFG must be followed regardless if the watercourse on site is dewatered or not in order to comply with proper mitigation measures:
 - 1) Avoidance. No equipment shall be operated in the live stream channel.

- 2) Stream Diversion. When work in a flowing stream is unavoidable, any streamflow shall be diverted around the work area by a barrier, temporary culvert or a new channel capable of permitting upstream and downstream fish movement.
 - 3) Barrier or Channel Construction. Construction of the barrier or the new channel shall normally begin in the downstream area and continue in an upstream direction and the flow shall be diverted only when construction of the diversion is completed.
 - 4) Sediment Control. No debris, soil, silt, sand, bark, slash, sawdust, cement, concrete, washings, petroleum products or other organic or earthen material shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into waters of the State.
 - 5) Consult with California Department of Fish and Game and US Fish and Wildlife Service. If these measures are implemented, then potentially adverse effects upon water quality should be reduced to a less-than-significant level. If these measures fail, however, the project applicant is to consult with local representatives of the CDFG and USFWS to develop contingency mitigation measures.
 - 6) Floodway Impact Mitigation. The applicant shall prepare the site, and use the winter flood season (October 15 to April 15) storage configuration as recommended by Schaaf & Wheeler, Consulting Civil Engineers, June 5, 2003.
31. **Noise Mitigation**. The project approved by this permit shall include implementation of the noise mitigation measures identified in the noise report entitled "Noise Monitoring of Unloading (Drop-off) and Loading (Pick-up) Components of the Proposed Recycling Operation at Granite Rock, Berryessa Road, San José, CA. , Thomas Reid Associates, March 30, 2001; Noise Monitoring of Nighttime Unloading (Drop-off) and Loading (Pick-up) Components of the Proposed Recycling Operation at Granite Rock, Berryessa Road, San José, CA. , Thomas Reid Associates, April 26, 2001; and Community Noise Exposure for the Proposed Recycling Operation at Granite Rock, Berryessa Road, San José, CA., Thomas Reid Associates, May 7, 2001.
- a. *Crusher*. The crusher shall be a model that produces a noise level of 60 dBA one hour Leq or less at a distance of 100 feet.
 - b. *Hours of Operation*. Construction and operations shall be limited as follows:
 - 1) Pick-up and drop-off operations shall occur Monday to Friday from 7:00 AM to 7:00 PM, and Saturday from 8:00 AM to 5:00 PM. Processing plant operations shall occur Monday to Friday from 7:00 AM to 5:00 PM, and Saturday from 8:00 AM to 5:00 PM.
 - 2) Deliveries shall not occur outside the above construction hours. All deliveries shall be coordinated to ensure that no delivery vehicles arrive prior to the opening of the premises to prevent the disruption of nearby residents.

- 3) The operating and construction hours shall be printed on all plans for the project used to construct the project.
 - c. *Sound Barrier.* The crusher operation area shall have a sound barrier installed at all times the crusher is located on-site.
32. **Air Quality, Street Cleaning and Dust Control.** The project approved by this permit shall include implementation of the air quality mitigation measures identified in the air quality report entitled "Health Risk Analysis For A Proposed Diesel-Fired Generator at the Granite Rock San José, California Facility," by Illingworth and Rodkin, Inc., dated November, 2002. While the project is under construction and during all dust-generating operations, the applicant shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. The following practices shall be implemented during all phases of construction and operations on the project site to the satisfaction of the Director of Planning and the City Project Engineer of the Department of Public Works. Specifically, the applicant shall:
- a. Employ good Best Management Practices for dust control on site.
 - 1) During crushing plant use, dust shall be abated by watering as necessary.
 - 2) Use dust abatement devices such as water sprays as listed in the BAAQMD permit to operate.
 - 3) Add additional moisture content to recycled base rock haul trucks as necessary to prevent air emissions.
 - 4) Water stockpiles as necessary to prevent dust emissions.
 - 5) Daily sweep the site including paved access roads, parking areas, and staging areas.
 - 6) Haul roads shall be in compliance with BAAQMD emission standards.
 - 7) Comply with conditions of NPDES General Industrial Storm Water Permit, including BMP, sampling and monitoring program, etc. to reduce fine sediment on site.
 - b. Supply electrical power from the utility grid.
33. **Portable Toilet.** A portable toilet shall be provided and properly maintained on the subject site at all times the site is open or in operation.
34. **Other Permits and Compliance with Other Agencies' Requirements.** The applicant shall obtain all necessary permits from and comply with all applicable requirements of the Santa Clara Valley Water District, the Bay Area Air Quality Management District, the Local

Enforcement Agency of the California Integrated Waste Management Board, the San Francisco Bay Regional Water Quality Control Board, the California Department of Fish and Game, and all other applicable local, State, and Federal agencies.

35. **Mitigation Monitoring and Reporting.** Annually, and at the time of completion of all required environmental mitigation activities, the applicant shall submit a report prepared by a qualified environmental consultant that documents the status and results of the required mitigation.
- a. A copy of this report shall be submitted to the to the satisfaction of the Director of Planning and in conformance with all applicable Federal, State and local standards.
 - b. The applicant shall pay to the City of San Jose all necessary fees per the City's approved fee schedule as required by the City of San Jose for documentation of the required environmental monitoring and reporting activities.
36. **Noncompliance and Order to Show Cause.** The Director of Planning may order an immediate halt to the operations, or a reduction in the hours of operations, if the Regional Water Quality Control Board or the Bay Area Air Quality Management District receives a notice of violation or the Director determines that the facility is not in substantial conformance with the requirements of the Conditional Use Permit or Zoning Ordinance. Within seven (7) days of ordering such a reduction, the Director of Planning shall issue a Notice of Noncompliance in conformance with Title 20 of the Municipal Code indicating the specific area(s) of noncompliance and providing notice that the Director may issue an Order to Show Cause why the Conditional Use Permit shall not be revoked, suspended, or modified if the noncompliance is not corrected within the specified time. The reduction in the allowed hours of operation may not extend beyond the time frame specified in the Notice of Noncompliance for correction unless the Director issues an Order to Show Cause. If the Director issues an Order to Show Cause, the reduction can continue until the Planning Commission holds a public hearing on the Order to Show Cause and makes a decision as to whether or not the permit should be modified, suspended or revoked.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire in two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession

thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.
3. **Time Limit.** This Conditional Use Permit expires and has no further force or effect **five (5)** years from the date of this permit. Please note that this conditional use permit has been granted for a period of five (5) year(s) only. You are being specifically and separately advised of this time limitation so that you will consider this time limitation in your decision to accept this permit or as you make any investment decision related to this property.
4. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Director of Planning, Building and Code Enforcement. In order to be timely, an application for renewal must be filed more than 90 calendar days but less than 180 calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.
5. **Compliance Review.** A Compliance Review is required one year from the date of approval of this Permit.

c: Building (2); Public Works;
Ben Licari, Graniterock Company, P.O. Box 50001, Watsonville, CA 95077

Attachments: Departmental and Agency Memos, Public Notice, Hearing Notice, Mitigated Negative Declaration, Initial Study, Public Correspondence